

[Filed 4-21-09]

IN THE IOWA DISTRICT COURT FOR HAMILTON COUNTY

STATE OF IOWA, ex rel., IOWA
DEPARTMENT OF NATURAL
RESOURCES,

Plaintiff,

vs.

WELCH OIL, INC. and BOONDOCKS
U.S.A., INC.,

Defendants.

NO. CV 027874

PETITION AT LAW

2009 APR 21 AM 10:18
CLERK OF DISTRICT COURT
HAMILTON COUNTY, IOWA

FILED

COMES NOW Plaintiff State of Iowa, ex rel., Iowa Department of Natural Resources ("IDNR") and for its claims against Defendants states as follows:

INTRODUCTION

1. The State of Iowa seeks the assessment of civil penalties and injunctive relief against Defendants arising from violations at the Boondocks U.S.A. Truck Stop in Williams, Iowa caused by their failure to comply with the water sampling requirements of a public water supply permit, failure to provide public notice of these violations, and for prohibited discharges of pollutants into waters of the state.

PARTIES

2. The State of Iowa is a sovereign state of the United States of America and brings this action on behalf of the IDNR, a duly constituted agency of the State of Iowa pursuant to Iowa Code section 455A.2 (2009).

3. Welch Oil, Inc. is an Iowa corporation doing business in Iowa as Boondocks U.S.A.

4. Boondocks U.S.A., Inc. is an Iowa corporation doing business in Hamilton County, Iowa.

DEFINITIONS

Public Water Supply Definitions

5. A "public water supply system" means "a system for the provision to the public of piped water for human consumption, if the system has at least fifteen service connections or regularly serves at least twenty-five individuals." Iowa Code section 455B.171(22); *see also* 567 Iowa Admin. Code 40.2.

6. A "community water system" is "a public water supply system which has at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents," and a "noncommunity water system" is any other public water supply system that is either a "transient noncommunity water system (TNC)" or a "nontransient noncommunity water system (NTNC)." 567 Iowa Admin. Code 40.2.

7. A "nontransient noncommunity water system (NTNC)" means "a public water system other than a community water system which regularly serves at least 25 of the same persons four hours or more per day, for four or more days per week, for 26 or more weeks per year. . . . such as hotels, resorts, hospitals and restaurants . . . if they employ 25 or more people and are open for 26 or more weeks of the year." 567 Iowa Admin. Code 40.2.

8. A "transient noncommunity water system (TNC)" means "a noncommunity water system that does not regularly serve at least 25 of the same persons over six months per calendar year." 567 Iowa Admin. Code 40.2.

Water Pollution Control Definitions

9. "Disposal system" means "a system for disposing of sewage, industrial waste, or other wastes" and includes "sewer systems, treatment works, point sources, dispersal systems, and any systems designed for the usage or disposal of sewage sludge." Iowa Code § 455B.171(5).

10. "Effluent standard" means "any restriction or prohibition on quantities, rates, and concentrations of chemical, physical, biological, radiological, and other constituents which are discharged from point sources into any water of the state including an effluent limitation, a water quality related effluent limitation, a standard of performance for a new source, a toxic effluent standard, or other limitation." Iowa Code § 455B.171(6).

11. "NPDES permit" means an operation permit, issued pursuant to the IDNR National Pollutant Discharge Elimination System (NPDES) program that authorizes the discharge of any pollutant into a navigable water. 567 Iowa Admin. Code 60.2.

12. "Person" means "any agency of the state or federal government or institution thereof, any municipality, governmental subdivision, interstate body, public or private corporation, individual, partnership, or other entity and includes any officer or governing or managing body of any municipality, governmental subdivision, interstate body, or public or private corporation." Iowa Code § 455B.171(16).

13. "Point source" means "any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit . . . from which pollutants are or may be discharged." Iowa Code § 455B.171(17).

14. "Pollutant" means "sewage, industrial waste, or other waste." Iowa Code § 455B.171(18).

15. "Sewage" means "the water-carried waste products from residences, public buildings, institutions, or other buildings, including the bodily discharges from human beings or animals together with such groundwater infiltration and surface water as may be present." Iowa Code § 455B.171(29).

16. "Sewer system" means "pipelines or conduits, pumping stations, force mains, vehicles, vessels, conveyances, injection wells, and all other constructions, devices, and appliances

appurtenant thereto used for conducting sewage or industrial waste or other wastes to a point of ultimate disposal or disposal to any water of the state." Iowa Code § 455B.171(32).

17. "Treatment works" means "any plant, disposal field, lagoon, holding or flow-regulating basin, pumping station, or other works installed for the purpose of treating, stabilizing, or disposing of sewage, industrial waste, or other wastes." Iowa Code Supp. § 455B.171(35).

18. "Water of the state" means "any stream, lake, pond, marsh, watercourse, waterway, well, spring, reservoir, aquifer, irrigation system, drainage system, and any other body or accumulation of water, surface or underground, natural or artificial, public or private, which are contained within, flow through or border upon the state or any portion thereof." Iowa Code § 455B.171(37).

19. "Water pollution" means "the contamination or alteration of the physical, chemical, biological, or radiological integrity of any water of the state by a source resulting in whole or in part from the activities of humans, which is harmful, detrimental, or injurious to public health, safety, or welfare, to domestic, commercial, industrial, agricultural, or recreational use or to livestock, wild animals, birds, fish, or other aquatic life." Iowa Code § 455B.171(38).

JURISDICTION

Public Water Supply Regulations

20. The Iowa Environmental Protection Commission is authorized to adopt rules relating to the operation of public water supply systems, drinking water standards to assure compliance with federal standards adopted pursuant to the Federal Safe Drinking Water Act, and monitoring, record keeping, and reporting requirements for any public water supply pursuant to Iowa Code sections 455B.173(3), (5) and (6). The Commission has adopted such rules at 567 Iowa Admin. Code 40-43.

21. A noncommunity water system using only groundwater and serving 1,000 persons or fewer must be sampled at least once per calendar quarter and have the samples analyzed for total

coliform bacteria in accordance with prescribed analytical procedures. 567 Iowa Admin. Code 41.2(1)"c"(1)"5".

22. The IDNR may require monitoring for total coliform on a more frequent basis based upon a sanitary survey or monitoring results history. 567 Iowa Admin. Code 41.2(1)"c"(1)"6".

23. If a routine sample is total coliform positive, the public water supply system must collect a set of repeat samples within 24 hours of being notified of the positive result and in no case more than 24 hours after being notified by the IDNR. A system which collects more than one routine sample per month must collect no fewer than three repeat samples for each total coliform-positive sample found. A system which collects one routine sample per month or fewer must collect no fewer than four repeat samples for each total-coliform positive sample found. 567 Iowa Admin. Code 41.2(1)"c"(2)"1".

24. If a system collecting fewer than five routine samples per month has one or more total coliform-positive samples and the IDNR does not invalidate the samples under 567 Iowa Admin. Code 41.2(1)"c"(3), it must collect at least five routine samples during the next month that the system provides water to the public. For systems monitoring on a quarterly basis, the additional five routine samples may be required to be taken within the same quarter in which the original total coliform-positive sample occurred. 567 Iowa Admin. Code 41.2(1)"c"(2)"5".

25. For a system which collects less than 40 samples per month, no more than one sample collected during a month may be total coliform-positive. A nonacute total coliform bacteria maximum contaminant level (MCL) violation occurs when two or more routine and repeat samples collected during a month are total coliform-positive. 567 Iowa Admin. Code 41.2(1)"b"(1)"2".

26. Community public water supply systems and nontransient noncommunity water systems shall conduct monitoring to determine compliance with the maximum contaminant levels specified in 567 Iowa Admin. Code 41.3(1)"b" for inorganic contaminants (IOCs) including nitrates as required by 567 Iowa Admin. Code 41.3(1)"c"(5) and (6).

27. Community public water supply systems and nontransient noncommunity water systems shall conduct monitoring to determine compliance with the maximum contaminant levels specified in 567 Iowa Admin. Code 41.3(1)"b" for volatile organic chemicals (VOCs), synthetic organic chemicals (SOCs), and trihalomethanes as required by 567 Iowa Admin. Code 41.5(1)"c"(2) and (3).

28. Community public water supply systems and nontransient noncommunity water systems that add a chemical disinfectant, including haloacetic acids (HAA5) and total trihalomethanes (TTHM), to the water in any part of the drinking water treatment process or which provide water that contains a chemical disinfectant shall conduct monitoring to determine compliance with the maximum contaminant levels specified in 567 Iowa Admin. Code 41.6(1)"b" as required by 567 Iowa Admin. Code 41.6(1)"c"(4).

29. The owner or operator of a public water supply system must notify persons served by the system if it violates the maximum contaminant levels contained in IDNR rules, or fails to perform the required monitoring. 567 Iowa Admin. Code 42.1.

30. No person shall operate any public water supply or part thereof without, or contrary to any condition of, an operation permit issued by the director. 567 Iowa Admin. Code 43.2(2).

31. A person who violates any provision of Iowa Code chapter 455B, Division III, Part 1 or any permit, rule, standard, or order issued thereunder shall be subject to a civil penalty not to exceed five thousand dollars (\$5,000.00) for each day of such violation. Iowa Code section 455B.191(1).

32. The Attorney General is authorized, at the request of the IDNR director with approval of the EPC, to initiate any legal proceedings, including an action for an injunction or temporary injunction, necessary to enforce the penalty provisions of Iowa Code chapter 455B, Division III, Part 1, or to obtain compliance with the provisions of said statutes or any rules promulgated or any provision of any permit issued thereunder. Iowa Code § 455B.191(4).

Water Pollution Control Regulations

33. The IDNR is the agency of the state responsible for the prevention, abatement, or control of water pollution. Iowa Code § 455B.172(1). The IDNR maintains jurisdiction over and regulates the direct discharge of pollutants to a water of the state. Iowa Code § 455B.172(5).

34. The Iowa Environmental Protection Commission (hereafter "EPC") has authority to establish water quality standards, pretreatment standards, and effluent standards; and adopt rules relating to the location, construction, operation, and maintenance of disposal systems; permits for the operation, installation, construction, addition to, or modification of disposal systems, or for the discharge of any pollutant; and inspection, monitoring, record keeping, and reporting requirements for owners and operators of disposal systems. Iowa Code §§ 455A.6(6)(a) and 455B.173(2), (3) and (6). The EPC's rules implementing these provisions are contained in 567 Iowa Admin. Code 60-69.

35. Operation of any wastewater disposal system or part thereof without, or contrary to any condition of, an operation permit issued by the IDNR, is prohibited. 567 Iowa Admin. Code 64.3(1).

36. The dumping, depositing, or discharging of pollutants into any water of the state is prohibited, except adequately treated sewage, industrial waste, or other waste pursuant to an NPDES permit issued by the IDNR. Iowa Code § 455B.186(1); 567 Iowa Admin. Code 62.1(1).

37. Records of operation (also known as monthly operation reports or "MORs") shall be submitted to the IDNR within 15 days following the close of the reporting period specified in the operation permit. 567 Iowa Admin. Code 63.7.

38. For any operation permit issued by the IDNR, the permittee at all times shall maintain in good working order and operate as efficiently as possible any facilities or systems of control to achieve compliance with the terms and conditions of the permit. 567 Iowa Admin. Code 64.7(5)"f".

39. A person who violates any provision of Iowa Code chapter 455B, Division III, Part 1 or any permit, rule, standard, or order issued thereunder shall be subject to a civil penalty not to exceed five thousand dollars (\$5,000.00) for each day of such violation. Iowa Code section 455B.191(1).

40. The Attorney General is authorized, at the request of the IDNR director with approval of the EPC, to initiate any legal proceedings, including an action for an injunction or temporary injunction, necessary to enforce the penalty provisions of Iowa Code chapter 455B, Division III, Part 1, or to obtain compliance with the provisions of said statutes or any rules promulgated or any provision of any permit issued thereunder. Iowa Code § 455B.191(4).

FACTS

41. Boondocks U.S.A. is a truck stop located at 3065 220th Street, Williams, Hamilton County, Iowa, that includes a retail fuel station, convenience store, hotel and a restaurant.

42. Boondocks U.S.A. is located on land owned by Defendant Welch Oil, Inc. Welch Oil does business under the fictitious name of Boondocks U.S.A. and, based on information and belief, operates all or some of the facilities located at the Boondocks U.S.A. truck stop.

43. Boondocks U.S.A., Inc., has its principal place of business at Boondocks U.S.A., and, by information and belief, operates all or some of the facilities located at the Boondocks U.S.A. truck stop.

44. John R. Welch is the president of both Welch Oil, Inc., and Boondocks U.S.A., Inc.

Public Water Supply

45. On May 12, 1999, the IDNR issued Public Water Supply Operation Permit # 4070201 to the Boondocks Truck Haven Café located at Boondocks U.S.A. for a transient noncommunity public water supply using a groundwater source. The permit required, among other things, that Boondocks U.S.A. conduct quarterly monitoring for coliform bacteria, annual nitrate monitoring, and notify the public of any monitoring violations.

46. On June 2, 2000, the IDNR issued Administrative Order No. 2000-WS-20 to Boondocks U.S.A., Inc. and Boondocks Truck Haven for failure to conduct required monitoring for coliform bacteria after samples taken at the facility were total coliform positive, and for failure to notify the public of monitoring violations. The Order also assessed an administrative penalty of \$2,750.00 pursuant to Iowa Code section 455B.109 and 567 Iowa Admin. Code 10. Boondocks U.S.A, Inc. appealed the penalty portion of the Order. Pursuant to a settlement agreement with the IDNR, Boondocks U.S.A. paid a \$500.00 administrative penalty.

47. On April 6, 2001, the IDNR issued a revised Public Water Supply Operation Permit # 4070201 to the Boondocks Truck Haven Café to address the violations included in Administrative Order No. 2000-WS-20. The permit separated the motel and the café into two separate distribution systems, and required, among other things, monthly monitoring for coliform bacteria at the café, and quarterly monitoring for coliform bacteria at the motel in addition to annual nitrate monitoring for both distribution systems. The permit expired on June 30, 2002.

48. By a letter dated February 15, 2002, the IDNR was notified that the assets of the Boondocks Truck Haven Café, Inc., which operated the café, were purchased by Welch Oil. Welch Oil failed to renew Permit # 4070201 before the June 30, 2002 expiration date.

49. On November 25, 2002, the IDNR issued Administrative Order No. 2002-WS-33 to Welch Oil for operating a public water supply system without a permit, failure to conduct annual nitrate monitoring and quarterly monitoring for the motel distribution system, and failure to notify the public of monitoring violations. Welch Oil did not appeal the order.

50. The IDNR reissued Public Water Supply Operation Permit # 4070201 to the Boondocks Café on December 20, 2002, under the same terms and conditions of the expired permit. The new permit expired on June 30, 2005.

51. In September 2004, the IDNR reclassified Boondocks Café as a “nontransient noncommunity water system” (NTNC) after a discussion with Boondocks Café representatives revealed the facility met the definition of an NTNC because its employee population had increased to forty-five individuals, including thirty full-time employees.

52. Because of the change in classification of the water supply to NTNC, the IDNR issued a revised Public Water Supply Operation Permit # 4070201 on November 12, 2004, to Welch Oil reflecting the change in classification and additional water supply testing associated with the reclassification. In addition to testing for coliform bacteria and nitrates, the revised permit included additional testing for lead, copper, nitrites, inorganic compounds (IOC), volatile organic compounds (VOC), synthetic organic compounds (SOC), total trihalomethanes (TTHM), Haloacetic Acids (HAA5), and disinfection byproducts. The revised permit was renewed on June 28, 2005, with an expiration date of June 30, 2008.

53. Welch Oil failed to take required samples for IOC, SOC, VOC and nitrites by the March 31, 2005 compliance deadline, and failed to take replacement samples as directed by the IDNR in April 19, 2005, and May 24, 2005 Notice of Violation (NOV) letters sent to Welch Oil.

54. On August 3, 2005, the IDNR issued an NOV letter to Welch Oil for failure to take required samples and replacement samples for IOC, SOC, VOC and required replacement sampled by September 30, 2005.

55. On November 7, 2005, the IDNR issued NOV letters to Welch Oil for failing to provide TTHM and HAA5 samples by the August 31, 2005 compliance deadline, and failing to provide a replacement IOC sample by the September 30, 2005 deadline.

56. On January 3, 2006, a revised Public Water Supply Operation Permit # 4070201 was issued to Welch Oil containing a reset IOC sampling compliance deadline of March 31, 2006.

57. On October 19, 2006, the IDNR issued NOV letters to Welch Oil for failing to take annual TTHM and HAA5 samples by the August 31, 2006 compliance deadline.

58. On March 29, 2007, a revised Public Water Supply Operation Permit # 4070201 was issued to Welch Oil to modify the sampling period for lead and copper from every six months to every three years.

59. On October 30, 2007, the IDNR issued an NOV letter to Welch Oil for failing to take annual TTHM and HAA5 samples by the August 31, 2007 compliance deadline.

60. A routine water supply sample taken on October 3, 2007, at the Boondocks Café tested positive for coliform bacteria. Welch Oil was required to take four repeat samples within 24 hours of being notified of the positive result and in no case more than 24 hours after being notified by the IDNR. Welch Oil, however, collected the required repeat samples 27 days after the October 3, 2007 routine sample. On December 26, 2007, the IDNR issued an NOV letter to Welch Oil for failing to submit timely repeat samples.

61. On March 17, 2008, a revised Public Water Supply Operation Permit # 4070201 (expiring June 30, 2011) was issued to Welch Oil, with some modifications to the testing schedule.

62. A routine water supply sample taken on May 7, 2008, at the Boondocks Café tested positive for coliform bacteria. Welch Oil was required to take four repeat samples within 24 hours of being notified of the positive result and in no case more than 24 hours after being notified by the IDNR on May 12, 2008. Welch Oil, however, collected the required repeat samples 22 days after the May 7, 2008 routine sample. On June 25, 2008, the IDNR issued an NOV letter to Welch Oil for failing to submit timely repeat samples.

63. From March 2005 to June 2008, the IDNR issued the following sixteen notices of violation to Welch Oil Boondocks Café for failure to take and/or report required water sampling:

Required Sample	Sample Due Date	NOV Issued by IDNR	Sample Taken	Public Notice
Nitrite	March 31, 2005	April 19, 2005	June 30, 2005	None given
VOC	March 31, 2005	May 24, 2005	June 29, 2005	None given
SOC	March 31, 2005	May 24, 2005	June 29, 2005	None given
IOC	March 31, 2005	May 24, 2005	Dec. 22, 2005	None given
VOC	June 30, 2005	August 3, 2005	Dec. 29, 2005	None given
SOC	June 30, 2005	August 3, 2005	Dec. 29, 2005	None given
IOC	June 30, 2005	August 3, 2005	Dec. 22, 2005	None given
TTHM	August 31, 2005	November 7, 2005	Dec. 29, 2005	None given
HAA5	August 31, 2005	November 7, 2005	Dec. 29, 2005	None given
IOC	Sep. 30, 2005	November 7, 2005	Dec. 22, 2005	None given
TTHM	August 31, 2006	October 19, 2006	None	None given
HAA5	August 31, 2006	October 19, 2006	None	None given
TTHM	August 31, 2007	October 30, 2007	Dec. 30, 2007	None given
HAA5	August 31, 2007	October 30, 2007	Dec. 30, 2007	None given
Coliform Bacteria	October 31, 2007	December 26, 2007	See ¶ 60 herein	None given
Coliform Bacteria	May 31, 2008	June 25, 2008	See ¶ 62 herein	None given

64. A routine water supply sample taken on July 2, 2008, at the Boondocks Café tested positive for coliform bacteria. Four repeat samples taken on July 10, 2008, also tested positive for coliform bacteria. On July 14, 2008, the IDNR issued an NOV letter to Welch Oil for exceeding the total coliform bacteria MCL for the month of July.

65. On March 5, 2009, the IDNR issued a NOV letter to Welch Oil for failure to submit copies of the public notification and/or delivery certification forms for monitoring and MCL

violations occurring on August 31, 2006, August 31, 2007, October 31, 2007, May 31, 2008, and July 31, 2008.

Water Pollution

66. In 1971, Welch Oil was issued a permit by the Iowa Department of Public Health to operate a wastewater stabilization lagoon at Boondocks U.S.A. containing two ¼ acre cells for a total capacity of 647,000 gallons. The two-cell wastewater lagoon provides treatment for the Boondocks U.S.A. restaurant, bathrooms, showers, and motel.

67. In 1978, the Iowa Department of Environmental Quality (the IDEQ has since been renamed as the IDNR) was granted authority to issue NPDES permits.

68. In a January 14, 1982 letter from the IDEQ, Welch Oil was notified of the need for an NPDES permit for effluent discharges from the lagoon, and it was directed to submit a permit application. No response was received from Welch Oil, and another notice was sent to Welch Oil on January 22, 1986. Welch Oil submitted an NPDES permit application on May 13, 1986.

69. An NPDES permit was issued to Welch Oil, Inc. in 1986 with an expiration date of July 1, 1991. Welch Oil did not renew the permit, and operated the lagoon from 1991 to 2008 without an NPDES permit.

70. On July 5, 2005, the IDNR issued a Notice of Violation letter (NOV) to Welch Oil, Inc. for discharging wastewater to an unnamed drainage ditch that flows to the Skunk River, a water of the state, without an NPDES permit. The NOV was issued after a May 25, 2005 IDNR inspection of the Boondocks truck stop revealed the wastewater lagoons were continuously discharging wastewater through an open valve. The NOV directed Welch Oil to apply for an NPDES discharge permit.

71. On January 6, 2006, the IDNR sent Welch Oil a partially completed NPDES permit application and requested Welch Oil complete the application and return it to the IDNR no later than April 10, 2006. No response was received from Welch Oil.

72. On June 20, 2006, the IDNR sent Welch Oil a second notice directing it to submit a completed NPDES permit application as soon as possible. No response was received from Welch Oil.

73. On September 26, 2006, IDNR Environmental Specialist Carl Berg inspected the wastewater lagoons and observed wastewater being continuously discharged into the unnamed drainage ditch through an open valve. Mr. Welch confirmed to Mr. Berg that the lagoons continuously discharge to the drainage ditch. Water samples taken during the inspection confirmed the effluent discharge contained significant levels of carbonaceous biological oxygen demand (CBOD₅) and ammonia.

74. On October 10, 2006, the IDNR issued an NOV letter to Welch Oil for discharging wastewater to a water of the state without an NPDES permit, and directed Welch Oil to immediately cease discharging from the lagoons, and to submit an NPDES application and associated fees by December 15, 2006. No response was received from Welch Oil.

75. On December 20, 2006, Mr. Berg contacted Mr. Welch by telephone to discuss the status of the NPDES permit application. Mr. Berg stated that if the completed application was not received by January 1, 2007, then Welch Oil would be referred for a penalty assessment. During the conversation, Mr. Welch also confirmed that a valve on one lagoon remained partially open and discharging due to rust.

76. On January 3, 2007, Welch Oil submitted an incomplete NPDES application to the IDNR. The incomplete application was returned to Welch Oil on January 29 with instructions on how to properly complete the application.

77. On January 10, 2007, Mr. Berg returned to Boondocks U.S.A. to discuss the incomplete NPDES permit application with Mr. Welch, and to take samples of the effluent discharge from the wastewater lagoon. Water samples taken during the visit confirmed the effluent discharge contained significant levels of total suspended solids (TSS), CBOD₅, and ammonia.

78. On February 13, 2007, Mr. Berg met with Mr. Welch at Boondocks U.S.A., and informed Mr. Welch that he could not allow continuous discharge from the lagoons. Because of the ongoing discharge, Mr. Berg stated that this matter would be referred to the IDNR legal section for enforcement.

79. On June 18, 2007, Mr. Berg returned to Boondocks U.S.A., and observed effluent being continuously discharged from the lagoons. Water samples taken during the visit confirmed the effluent discharge contained significant levels of CBOD₅ and ammonia.

80. On June 27, 2007, the IDNR issued an NOV letter to Welch Oil for failure to properly clean up a fuel spill, and for discharging wastewater to a water of the state without an NPDES permit. No response was received from Welch Oil.

81. On August 16, 2007, Mr. Berg returned to Boondocks U.S.A. He observed contaminated soil had been excavated at the site of the fuel spill; however, he again observed effluent being continuously discharged from the lagoons.

82. On November 27, 2007, Mr. Berg again inspected Boondocks U.S.A. He observed that the fuel spill was apparently removed; however, effluent continued to be discharged from the wastewater lagoons. Water samples taken during the visit confirmed the effluent discharge contained significant levels of TSS, CBOD₅ and ammonia.

83. On December 11, 2007, the IDNR issued an NOV letter to Welch Oil for discharging wastewater without an NPDES permit. No response was received from Welch Oil.

84. On August 11, 2008, NPDES Permit No. 4000701 was issued to Welch Oil, Inc., a copy of which is attached, marked Exhibit A, and incorporated by reference. The permit specifies effluent limitations and monitoring requirements for controlled pollution discharges from the two-cell wastewater stabilization lagoon, and prohibits a continuous discharge of wastewater from the lagoon.

85. The permit establishes 7-day and 30-day average effluent limitations for carbonaceous biochemical oxygen demand (CBOD₅), total suspended solids (TSS), and daily maximum and 7-day average limitations for pH. Furthermore, the permit requires Welch Oil to monitor the flow of wastewater to the lagoon and the depth of the two wastewater cells once per week, and monitor the flow from the lagoon twice per week.

86. Standard Condition No. 8 of the permit provides, in part, that the wastewater stabilization lagoon shall be operated as efficiently as possible and maintained in good working order, and that adequate laboratory controls and appropriate quality assurance procedures be provided to maintain compliance with the conditions of the permit. *See also* 567 Iowa Admin. Code 64.7(5)“F”.

87. On February 18, 2009, Mr. Berg inspected the wastewater lagoons and confirmed that no Monthly Operating Reports (MORs) were submitted to the IDNR since the NPDES Permit was issued in August 2008. Furthermore, Welch Oil failed to monitor the influent and effluent flow of wastewater to and from the lagoon, and failed to measure the depth of the wastewater cells.

88. During the inspection, Mr. Berg observed that the lagoon berm was damaged by an overgrowth of trees, woody vegetation and cattails. He also confirmed that the lagoon was continuously discharging wastewater due to a deteriorated and malfunctioning valve. Furthermore, Mr. Berg’s review of wastewater sample results previously collected by Welch Oil confirmed Welch

Oil failed to collect samples in September 2008, and the 30-day average CBOD₅ limit was exceeded in November 2008, and the 30-day average TSS limit was exceeded in January 2009.

89. Mr. Berg collected samples of the wastewater effluent during his inspection. Sample results confirmed the effluent significantly exceeded the 7-day and 30-day average limits for CBOD₅.

90. On March 6, 2009, the IDNR issued an NOV letter to Welch Oil for the violations observed during Mr. Berg's February 18, 2009 inspection.

91. From May 25, 2005 to February 18, 2009, the DNR has identified the following water pollution control violations during inspections at Boondocks U.S.A.:

Inspection Date	Water Pollution Control Violations
May 25, 2005	<ul style="list-style-type: none"> Continuous discharge of wastewater without a permit
September 26, 2006	<ul style="list-style-type: none"> Continuous discharge of wastewater without a permit TSS discharge at 39 mg/L CBOD₅ discharge at 28 mg/L Ammonia discharge at 6.7 mg/L
January 10, 2007	<ul style="list-style-type: none"> Continuous discharge of wastewater without a permit TSS discharge at 78 mg/L CBOD₅ discharge at 74 mg/L Ammonia discharge at 12 mg/L
June 18, 2007	<ul style="list-style-type: none"> Continuous discharge of wastewater without a permit TSS discharge at 40 mg/L CBOD₅ discharge at 39 mg/L Ammonia discharge at 8.5 mg/L
August 16, 2007	<ul style="list-style-type: none"> Continuous discharge of wastewater without a permit
November 27, 2007	<ul style="list-style-type: none"> Continuous discharge of wastewater without a permit TSS discharge at 64 mg/L CBOD₅ discharge at 53 mg/L Ammonia discharge at 21 mg/L
February 18, 2009	<ul style="list-style-type: none"> Violations of the August 11, 2008 NPDES permit <ul style="list-style-type: none"> Continuous discharge of wastewater Lagoon berm and effluent valves in disrepair No wastewater sampling conducted in September 2008 No MORs submitted since permit issued No lagoon flow or depth measurements since permit issued 30-day average CBOD limit exceeded in November 2008 30-day average TSS limit exceeded in January 2009 7-day & 30-day average CBOD limits exceeded for February 2009

VIOLATIONS

Public Water Supply Violations

92. Defendants failed to timely conduct repeat sampling for coliform bacteria in violation of 567 Iowa Admin. Code 41.2(1)"c"(2)"1".

93. Defendants did not submit timely routine samples for IOCs in violation of 567 Iowa Admin. Code 41.3(1)"c"(5) and (6), 43.2(2), and revised Public Water Supply Operation Permit # 4070201.

94. Defendants did not submit timely routine samples for VOCs and SOCs in violation of 567 Iowa Admin. Code 41.5(1)"c"(2) and (3), 43.2(2), and revised Public Water Supply Operation Permit # 4070201.

95. Defendants did not submit timely routine samples for HAA5 and TTHM in violation of 567 Iowa Admin. Code 41.6(1)"c"(4), 43.2(2), and revised Public Water Supply Operation Permit # 4070201.

96. Defendants failed to provide public notice that routine monitoring deadlines were not met, and failed to provide public notice of the failure to take repeat samples, in violation of 567 Iowa Admin. Code 42.1, 43.2(2), and revised Public Water Supply Operation Permit # 4070201.

97. Defendants exceeded the MCL for total coliform bacteria in July 2008 in violation of 567 Iowa Admin. Code 41.2(1)"b"(1)"2".

Water Pollution Control Violations

98. Prior to August 11, 2008, Defendants continuously discharged pollutants into a water of the state without a permit issued by the IDNR in violation of Iowa Code section 455B.186(1), 567 Iowa Admin. Code 62.1(1) and 64.3(1).

99. Since August 11, 2008, Defendants failed to submit MORs to the IDNR in violation of 567 Iowa Admin. Code 63.7 and Iowa NPDES Permit No. 4000701.

100. Since August 11, 2008, Defendants failed to maintain in good working order and/or operate as efficiently as possible the wastewater stabilization lagoon as necessary to achieve compliance with the terms and conditions of the NPDES permit in violation of 567 Iowa Admin. Code 64.7(5)"f" and Iowa NPDES Permit No. 4000701.

101. Since August 11, 2008, Defendants have continuously discharged pollutants into a water of the state in violation of Iowa Code section 455B.186(1), 567 Iowa Admin. Code 62.1(1), 64.3(1), and Iowa NPDES Permit No. 4000701.

102. Since August 11, 2008, Defendants failed to monitor the influent and effluent flow of wastewater to and from the wastewater stabilization lagoon, and failed to measure the depth of the wastewater cells in violation of 567 Iowa Admin. Code 64.3(1) and Iowa NPDES Permit No. 4000701.

103. Defendants failed to conduct any pre-discharge or final effluent sampling of the wastewater stabilization lagoon for the month of September 2008 in violation of 567 Iowa Admin. Code 64.3(1) and Iowa NPDES Permit No. 4000701.

104. Defendants have discharged pollutants into a water of the state at levels exceeding the 7-day and/or 30-day average effluent limitations in November 2008, January 2009, and February 2009 in violation of Iowa Code section 455B.186(1), 567 Iowa Admin. Code 62.1(1) and 64.3(1), and Iowa NPDES Permit No. 4000701.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff State of Iowa, ex rel., Iowa Department of Natural Resources respectfully requests that the Court:

- a. assess a civil penalty against Defendants pursuant to Iowa Code section 455B.191(1) for each day of violation of Iowa Code section 455B.186(1), 567 Iowa Admin. Code 41.2(1)"b"(1)"2", 41.2(1)"c"(2)"1", 41.3(1)"c"(5) and (6), 41.5(1)"c"(2) and (3), 41.6(1)"c"(4), 42.1, 43.2(2), 62.1(1), 63.7, 64.3(1), 64.7(5)"f", NPDES

Permit No. 4000701, and revised Public Water Supply Operation Permit # 4070201 not to exceed Five Thousand Dollars (\$5,000.00) for each day of such violation;

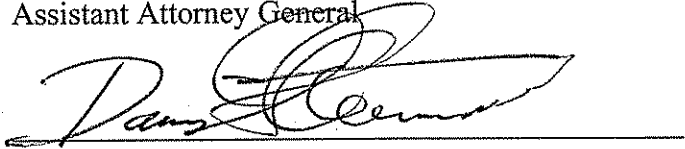
b. issue injunctive relief, including but not limited to a permanent injunction enjoining Defendants from any violation of Iowa Code section 455B.186(1), 567 Iowa Admin. Code 41.2(1)"b"(1)"2", 41.2(1)"c"(2)"1", 41.3(1)"c"(5) and (6), 41.5(1)"c"(2) and (3), 41.6(1)"c"(4), 42.1, 43.2(2), 62.1(1), 63.7, 64.3(1), 64.7(5)"f", NPDES Permit No. 4000701, and revised Public Water Supply Operation Permit # 4070201.

Plaintiff further requests that the Court tax the costs of this action to the Defendants and provide such other relief as the Court may deem just and proper.

Respectfully submitted,

THOMAS J. MILLER
Attorney General of Iowa

DAVID R. SHERIDAN
Assistant Attorney General



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ATTORNEYS FOR PLAINTIFF

IOWA DEPARTMENT OF NATURAL RESOURCES
National Pollutant Discharge Elimination System (NPDES) Permit

OWNER NAME & ADDRESS

WELCH OIL INC.
I-35 AT EXIT 144 E 3065 220TH STREET
WILLIAMS, IA 50271 -

FACILITY NAME AND ADDRESS

BOONDOCKS USA TRUCK STOP
3065 220TH STREET
WILLIAMS, IA 50271 -

Section 33, T 89N, R 23W
HAMILTON County

IOWA NPDES PERMIT NUMBER: 4000701

DATE OF ISSUANCE: 8/11/2008

DATE OF EXPIRATION: 8/10/2013

**YOU ARE REQUIRED TO FILE FOR
RENEWAL OF THIS PERMIT BY:** 2/11/2013

EPA NUMBER: IA0079898

This permit is issued pursuant to the authority of section 402(b) of the Clean Water Act (33 U.S.C 1342(b)), Iowa Code section 455B.174, and rule 567--64.3, Iowa Administrative Code. You are authorized to operate the disposal system and to discharge the pollutants specified in this permit in accordance with the effluent limitations, monitoring requirements and other terms set forth in this permit.

You may appeal any condition of this permit by filing a written notice of appeal and request for administrative hearing with the director of this department within 30 days of your receipt of this permit.

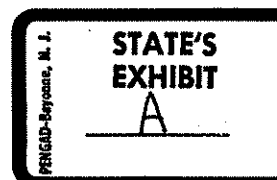
Any existing, unexpired Iowa operation permit or Iowa NPDES permit previously issued by the department for the facility identified above is revoked by the issuance of this permit. This provision does not apply to any authorization to discharge under the terms and conditions of a general permit issued by the department or to any permit issued exclusively for the discharge of stormwater.

FOR THE DEPARTMENT OF NATURAL RESOURCES

By

Angela Foehring-Nkanta

Angela Foehring-Nkanta
NPDES Section
ENVIRONMENTAL SERVICES DIVISION



Facility Name: BOONDOCKS USA TRUCK STOP

Permit Number: 4000701

Outfall Description

001 CONTROLLED DISCHARGE FROM 2-CELL WASTE STABILIZATION LAGOON

Receiving Stream: DRAINAGE DITCH #64

Route of Flow: DRAINAGE DITCH #64 TO SOUTH SKUNK RIVER

Class A1 waters are primary contact recreational use waters in which recreational or other uses may result in prolonged and direct contact with the water, involving considerable risks of ingesting water in quantities sufficient to pose a health hazard. Such activities would include, but not be limited to, swimming, diving, water skiing, and water contact recreational canoeing.

Waters designated Class B(WW1) are those in which temperature, flow and other habitat characteristics are suitable to maintain warm water game fish populations along with a resident aquatic community that includes a variety of native nongame fish and invertebrates species. These waters generally include border rivers, large interior rivers, and the lower segments of medium-size tributary streams.

Discharge of sanitary sewer overflows is prohibited. See Standard Condition #21

Facility Name: BOONDOCKS USA TRUCK STOP

Permit Number: 4000701

Effluent Limitations

Outfall No.: 001 CONTROLLED DISCHARGE FROM 2-CELL WASTE STABILIZATION LAGOON

You are prohibited from discharging pollutants except in compliance with the following effluent limitations:

EFFLUENT LIMITATIONS										
Wastewater Parameter	Season	Type of Limit	% Removal	Concentration				Mass		
				7 Day Average/Min	30 Day Average	Daily Maximum	Units	7 Day Average	30 Day Average	Daily Maximum
							MG/L			
CBOD5	YEARLY	FINAL	85	40.0	25.0		MG/L			
TOTAL SUSPENDED SOLIDS	YEARLY	FINAL		120.0	80.0		MG/L			
PH (MINIMUM - MAXIMUM)	YEARLY	FINAL		6.0		9.0	STD UNITS			

Note: If seasonal limits apply, summer is from March 15 through November 15, and winter is from November 16 through March 14.

Facility Name: BOONDOCKS USA TRUCK STOP

Permit Number: 4000701

Monitoring and Reporting Requirements

- (a) Samples and measurements taken shall be representative of the volume and nature of the monitored wastewater.
- (b) Analytical and sampling methods specified in 40 CFR Part 136 or other methods approved in writing by the department shall be utilized.
- (c) Chapter 63 of the Iowa Administrative Code provides you with further explanation of your monitoring requirements.
- (d) You are required to report all data including calculated results needed to determine compliance with the limitations contained in this permit. This includes daily maximums and minimums, 30-day averages and 7-day averages for all parameters that have concentration (mg/l) and mass (lbs/day) limits. Also, flow data shall be reported in million gallons per day (MGD).
- (e) Results of all monitoring shall be recorded on forms provided by, or approved by, the department, and shall be submitted to the department by the fifteenth day following the close of the reporting period. Your reporting period is on a monthly basis, ending on the last day of each reporting period.

Outfall Number	Wastewater Parameter	Sample Frequency	Sample Type	Monitoring Location
001	FLOW TO LAGOON	1 TIME PER WEEK	24 HOUR TOTAL	RAW WASTE
001	CBOD5	PRIOR TO DISCHARGE	GRAB	PRE-DISCHARGE SAMPLE
001	TOTAL SUSPENDED SOLIDS	PRIOR TO DISCHARGE	GRAB	PRE-DISCHARGE SAMPLE
001	CBOD5	1 EVERY 6 MONTHS	GRAB	FINAL EFFLUENT
001	TOTAL SUSPENDED SOLIDS	1 EVERY 6 MONTHS	GRAB	FINAL EFFLUENT
001	PH (MINIMUM - MAXIMUM)	1 EVERY 6 MONTHS	GRAB	FINAL EFFLUENT
001	FLOW FROM LAGOON	2 TIMES PER WEEK	INSTANTANEOUS	FINAL EFFLUENT
001	CELL DEPTH	1 TIME PER WEEK	MEASUREMENT	CELL 2 CONTENTS
001	CELL DEPTH	1 TIME PER WEEK	MEASUREMENT	CELL 1 CONTENTS

Facility Name: BOONDOCKS USA TRUCK STOP
Permit Number: 4000701

Controlled Discharge Lagoon Operation and Sampling Procedures

OPERATION REQUIREMENTS

Continuous discharge of wastewater from this facility is prohibited. The treatment plant must be operated using a storage/drawdown mode of operating. Wastewater must be stored for approximately 180 days after which time the water level is to be lowered to make room for the next storage period. Acceptable discharge periods are April 15th through June 15th and September 30th through December 21st. Lagoon drawdown shall occur during these periods except in emergency situations. The permittee is required to contact the local DNR Field Office and obtain prior approval if there is a need to discharge during other times of the year, when stream flows are low or if the effluent limitations specified in this permit will not be met. Lagoon drawdown at a rate greater than 10 times the 180 day AWW design flow is prohibited.

PRE-DISCHARGE SAMPLING

The permittee is responsible for complying with the limits contained in this permit. Therefore the permittee must collect a sample from the final lagoon cell at a point near the outlet structure at least two weeks prior to the time it becomes necessary to discharge. The permittee must have the sample analyzed for 5-day carbonaceous biochemical oxygen demand (CBOD₅), and total suspended solids (TSS) and compare these sample results with the 30-day average effluent limits. If the results are less than the 30-day average limits, isolate the final cell and draw down the lagoon cell.

If the pre-discharge sample results exceed the 30-day average effluent limits for either CBOD₅ or TSS, the permittee must contact the local DNR Field Office for guidance before beginning to discharge.

Report pre-discharge sample results in the spaces provided on the monthly operation report form.

EFFLUENT SAMPLING

The permittee must collect and analyze a sample of the final effluent on the third day after discharge begins for all parameters for which monitoring of the final effluent is specified on the page titled MONITORING AND REPORTING REQUIREMENTS. If the discharge continues for a period of time longer than the required monitoring frequency specified in this permit, all parameters must be sampled at the specified frequencies. Report the results on the monthly operation report form in the columns provided for effluent monitoring. The results must be reported for the days the samples were collected, not for the days the sample results were received from the laboratory.

Revised: May 1, 2007

Facility Name: BOONDOCKS USA TRUCK STOP

Permit Number: 4000701

Design Capacity

Outfall Number: 001

The design capacity for the treatment works is specified in Construction Permit Number 71-330-S, issued December 29, 1971 and Engineering Review Notes dated July 29, 1971. The treatment plant is designed to treat a 180-day average wet weather (A WW) flow of 0.0039 MGD. The design 5-day biochemical oxygen demand (BOD5) load is 10.4 lbs/day.

Operator Certification Type/Grade: WL/I

Wastes in such volumes or quantities as to exceed the design capacity of the treatment works or reduce the effluent quality below the specified in the operation permit of the treatment works are considered to be a waste which interferes with the operation or performance of the treatment works and are prohibited by rule IAC 567-62.1(7).

Facility Name: BOONDOCKS USA TRUCK STOP

Permit Number: 4000701

SEWAGE SLUDGE HANDLING AND DISPOSAL REQUIREMENTS

"Sewage sludge" is solid, semisolid, or liquid residue generated during the treatment of domestic sewage in a treatment works. Sewage sludge does not include the grit and screenings generated during preliminary treatment.

1. The permittee shall comply with all existing Federal and State laws and regulations that apply to the use and disposal of sewage sludge and with technical standards developed pursuant to Section 405(d) of the Clean Water Act when such standards are promulgated. If an applicable numerical limit or management practice for pollutants in sewage sludge is promulgated after issuance of this permit that is more stringent than a sludge pollutant limit or management practice specified in existing Federal or State laws or regulations, this permit shall be modified, or revoked and reissued, to conform to the regulations promulgated under Section 405(d) of the Clean Water Act. The permittee shall comply with the limitation no later than the compliance deadline specified in the applicable regulations.
2. The permittee shall provide written notice to the Department of Natural Resources prior to any planned changes in sludge disposal practices.
3. Land application of sewage sludge shall be conducted in accordance with criteria established in rule IAC 567-67.1 through 67.11 (455B).

Facility Name: BOONDOCKS USA TRUCK STOP

Permit Number: 4000701

**MAJOR CONTRIBUTING INDUSTRIES
LIMITATIONS, MONITORING AND REPORTING REQUIREMENTS**

1. You are required to notify the department, in writing, of any of the following:

(a) 180 days prior to the introduction of pollutants to your facility from a major contributing industry. A major contributing industry means an industrial user of a treatment works that:

(1) Has a flow of 50,000 gallons or more per average work day;

(2) Has a flow greater than five percent (5%) of the flow carried by the treatment works receiving the waste;

(3) Has in its waste a toxic pollutant in toxic amounts as defined in standards issued under Section 307 (a) of the Clean Water Act and adopted by reference in Rule 62.5(455B); or

(4) Is found by the department in connection with the issuance of an NPDES permit to have a significant impact, either alone or in combination with other contributing industries, on the treatment works or on the quality of effluent from the treatment works.

(b) 60 days prior to a proposed expansion, production increase or process modification that may result in the discharge of a new pollutant or a discharge in excess of limitations stated in the existing treatment agreement.

(c) 10 days prior to any commitment by you to accept waste from any new major contributing industry.

Your written notification must include a new or revised treatment agreement in accordance with rule 64.3(5)(455B).

2. You shall require all users of your facility to comply with Sections 204(b), 307 and 308 of the Clean Water Act.

Section 204(b) requires that all users of the treatment works constructed with funds provided under Sections 201(g) or 601 of the Act to pay their proportionate share of the costs of operation, maintenance and replacement of the treatment works.

Section 307 of the Act requires users to comply with pretreatment standards promulgated by EPA for pollutants that would cause interference with the treatment process or would pass through the treatment works.

Section 308 of the Act requires users to allow access at reasonable times to state and EPA inspectors for the purpose of sampling the discharge and reviewing and copying records.

3. You shall limit and monitor pollutants for each major contributing industry as required elsewhere in this permit, and submit sample results to the department monthly.
Your report shall be submitted by the fifteenth day of the following month.

Revised: August 18, 1993 cwf

STANDARD CONDITIONS

1. DEFINITIONS

(a) 7 day average means the sum of the total daily discharges by mass, volume or concentration during a 7 consecutive day period, divided by the total number of days during the period that measurements were made. Four 7 consecutive day periods shall be used each month to calculate the 7-day average. The first 7-day period shall begin with the first day of the month.

(b) 30 day average means the sum of the total daily discharges by mass, volume or concentration during a calendar month, divided by the total number of days during the month that measurements were made.

(c) daily maximum means the total discharge by mass, volume or concentration during a twenty-four hour period.

2. DUTY TO COMPLY

You must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Clean Water Act and is grounds for enforcement action; permit termination, revocation and reissuance, or modification; or denial of a permit renewal application. Issuance of this permit does not relieve you of the responsibility to comply with all local, state and federal laws, ordinances, regulations or other legal requirements applying to the operation of your facility.
{See 40 CFR 122.41(a) and 567-64.7(4)(e) IAC}

3. DUTY TO REAPPLY

If you wish to continue to discharge after the expiration date of this permit you must file an application for reissuance at least 180 days prior to the expiration date of this permit.
{See 567-64.8(1) IAC}

4. NEED TO HALT OR REDUCE ACTIVITY

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.
{See 40 CFR 122.41(c) and 567-64.7(5)(f) IAC}

5. DUTY TO MITIGATE

You shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.
{See 40 CFR 122.41(d) and 567-64.7(5)(f) IAC}

6. PROPERTY RIGHTS

This permit does not convey any property rights of any sort or any exclusive privileges.

7. TRANSFER OF TITLE

If title to your facility, or any part of it, is transferred the new owner shall be subject to this permit.
{See 567-64.14 IAC}

You are required to notify the new owner of the requirements of this permit in writing prior to any transfer of title. The Director shall be notified in writing within 30 days of the transfer

8. PROPER OPERATION AND MAINTENANCE

All facilities and control systems shall be operated as efficiently as possible and maintained in good working order. A sufficient number of staff, adequately trained and knowledgeable in the operation of your facility shall be retained at all times and adequate laboratory controls and appropriate quality assurance procedures shall be provided to maintain compliance with the conditions of this permit.
{See 40 CFR 122.41(e) and 567 64.7(5)(f) IAC}

9. DUTY TO PROVIDE INFORMATION

You must furnish to the Director, within a reasonable time, any information the Director may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit or to determine compliance with this permit. You must also furnish to the Director, upon request, copies of any records required to be kept by this permit.

10. MAINTENANCE OF RECORDS

You are required to maintain records of your operation in accordance with 567-63.2 IAC.

11. PERMIT MODIFICATION, SUSPENSION OR REVOCATION

(a) This permit may be modified, suspended, or revoked and reissued for cause including but not limited to those specified in 567-64.3(11) IAC.

(b) This permit may be modified due to conditions or information on which this permit is based, including any new standard the department may adopt that would change the required effluent limits.
{See 567-64.3(11) IAC}

(c) If a toxic pollutant is present in your discharge and more stringent standards for toxic pollutants are established under Section 307(a) of the Clean Water Act, this permit will be modified in accordance with the new standards.
{See 40 CFR 122.62(a)(6) and 567-64.7(5)(g) IAC}

The filing of a request for a permit modification, revocation or suspension, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

12. SEVERABILITY

The provisions of this permit are severable and if any provision or application of any provision to any circumstance is found to be invalid by this department or a court of law, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected by such finding.

STANDARD CONDITIONS

13. INSPECTION OF PREMISES, RECORDS, EQUIPMENT, METHODS AND DISCHARGES

You are required to permit authorized personnel to:

- (a) Enter upon the premises where a regulated facility or activity is located or conducted or where records are kept under conditions of this permit.
- (b) Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit.
- (c) Inspect, at reasonable times, any facilities, equipment, practices or operations regulated or required under this permit.
- (d) Sample or monitor, at reasonable times, for the purpose of assuring compliance or as otherwise authorized by the Clean Water Act.

14. TWENTY-FOUR HOUR REPORTING

You shall report any noncompliance that may endanger human health or the environment. Information shall be provided orally within 24 hours from the time you become aware of the circumstances. A written submission that includes a description of noncompliance and its cause; the period of noncompliance including exact dates and times, whether the noncompliance has been corrected or the anticipated time it is expected to continue; and the steps taken or planned to reduce, eliminate, and prevent a reoccurrence of the noncompliance must be provided within 5 days of the occurrence. The following instances of noncompliance must be reported within 24 hours of occurrence:

- (a) Any unanticipated bypass which exceeds any effluent limitation in the permit.
{See 40 CFR 122.41(l)(5)(ii)(A)}
- (b) Any upset which exceeds any effluent limitation in the permit.
{See 40 CFR 122.41(l)(5)(ii)(B)}
- (c) Any violation of a maximum daily discharge limit for any of the pollutants listed by the Director in the permit to be reported within 24 hours.
{See 40 CFR 122.41(l)(5)(ii)(C)}

15. OTHER NONCOMPLIANCE

You shall report all instances of noncompliance not reported under Condition #14 at the time monitoring reports are submitted.

16. ADMINISTRATIVE RULES

Rules of this Department which govern the operation of your facility in connection with this permit are published in Part 567 of the Iowa Administrative Code (IAC) in Chapters 60-65 and 121. Reference to the term "rule" in this permit means the designated provision of Part 567 of the Iowa Administrative Code.

17. NOTICE OF CHANGED CONDITIONS

You are required to report any changes in existing conditions or information on which this permit is based:

- (a) Facility expansions, production increases or process modifications which may result in new or increased discharges of pollutants must be reported to the Director in advance. If such discharges will exceed effluent limitations, your report must include an application for a new permit.
{See 567-64.7(5)(a) IAC}
- (b) If any modification of, addition to, or construction of a disposal system is to be made, you must first obtain a written permit from this Department.
{See 567-64.2 IAC}
- (c) If your facility is a publicly owned treatment works or otherwise may accept waste for treatment from industrial contributors see 567-64.3(5) IAC for further notice requirements.
- (d) You shall notify the Director as soon as you know or have reason to believe that any activity has occurred or will occur which would result in the discharge of any toxic pollutant which is not limited in this permit.
{See 40 CFR 122.42(a)}
- (e) No construction activity that will result in disturbance of one acre or more shall be initiated without first obtaining coverage under NPDES General Permit No. 2 for "Storm water discharge associated with construction activity".

You must also notify the Director if you have begun or will begin to use or manufacture as an intermediate or final product or byproduct any toxic pollutant which was not reported in the permit application

18. OTHER INFORMATION

Where you become aware that you failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report, you must promptly submit such facts or information.

STANDARD CONDITIONS

19. UPSET PROVISION

- (a) Definition - "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.
- (b) Effect of an upset. An upset constitutes an affirmative defense in an action brought for noncompliance with such technology based permit effluent limitations if the requirements of paragraph "c" of this condition are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.
- (c) Conditions necessary for demonstration of an upset. A permittee who wishes to establish the affirmative defense of upset shall demonstrate through properly signed, contemporaneous operating logs, or other relevant evidence that:
- (1) An upset occurred and that the permittee can identify the cause(s) of the upset.
 - (2) The permitted facility was at the time being properly operated; and
 - (3) The permittee submitted notice of the upset to the Department in accordance with 40 CFR 122.41(l)(6)(ii)(B).
 - (4) The permittee complied with any remedial measures required by Item #5 of the Standard Conditions of this permit.
- (d) Burden of Proof. In any enforcement proceeding, the permittee seeking to establish the occurrence of an upset has the burden of proof.

20. FAILURE TO SUBMIT FEES

This permit may be revoked, in whole or in part, if the appropriate permit fees are not submitted within thirty (30) days of the date of notification that such fees are due.

21. BYPASSES AND SANITARY SEWER OVERFLOWS

(a) Definitions

Bypass means the intentional diversion of waste streams from any portion of a treatment facility.

Sanitary sewer overflow (SSO) means an overflow, spill, release, or diversion of wastewater from a sanitary sewer collection system designed to carry only sewage and prior to reaching the treatment works.

BYPASSES (Continued)

(b) Prohibitions

- i. Sanitary sewer overflows (SSOs) are prohibited.
- ii. Bypass is prohibited and the department may take enforcement action against a permittee for bypass unless all of the following three conditions are met:
 - (1) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage; and
 - (2) There were no feasible alternatives to the bypass such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate backup equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and
 - (3) The permittee submitted notices as required by paragraph "d" of this section.
- (c) The Director may approve an anticipated bypass after considering its adverse effects if the Director determines that it will meet the three conditions listed above.
- (d) Reporting bypasses and SSOs. Bypasses and SSOs shall be reported in accordance with 567-63.6 IAC.

22. SIGNATORY REQUIREMENTS

Applications, reports or other information submitted to the Department in connection with this permit must be signed and certified as required by 567-64.3(8) IAC.

23. USE OF CERTIFIED LABORATORIES

Effective October 1, 1996, analyses of wastewater, groundwater or sewage sludge that are required to be submitted to the department as a result of this permit must be performed by a laboratory certified by the State of Iowa. Routine, on-site monitoring for pH, temperature, dissolved oxygen, total residual chlorine and other pollutants that must be analyzed immediately upon sample collection, settleable solids, physical measurements, and operational monitoring tests specified in 567-63.3(4) are excluded from this requirement.

24. LEGAL AND FINANCIAL LIABILITY WAIVER

No legal or financial responsibility arising from the operation or maintenance of any disposal system or part thereof installed by the permittee to achieve compliance with this permit shall attach to the State of Iowa or the Iowa Department of Natural Resources.